BAIL SLIP

That the Appellant No.2/Accused No.2 namely Anandan was directed to be released on bail by order of this Court dt. 7.4.99 in crl. M.P. NO. 2133/99 in Crl. A.No. 327/96 on the file of this Court.

That the AppellantNo. 1/Accused No.1 namely Moorthy was directed to be released on bail by order of this Court dt. 20.7.99 in Crl.M.P. NO. 5195/99 in Crl.A.No. 327/96 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 9.12.2004

CORAM:

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
AND
THE HONOURABLE MR.JUSTICE C.NAGAPPAN

Criminal Appeal No.327 of 1996

1.Moorthy

2.Anandan .. Appellants/Accused Nos.1 and 2.

-Vs-

State, represented
by Inspector of Police,
Sembanarkoil Police
Station,
Sembanarkoil.
Crime No.483/1993 .. Respondent / Complainant

Appeal under Section 374 Cr.P.C against the judgment dated 15.2.1996 passed in S.C.No.168/1994 on the file of Additional Sessions Judge, Nagapattinam Quide-E-Milleth District at Nagapattinam.

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For appellants : Mr.K.V.Sridharan

For respondent : Mr.E.Raja
Additional Public Prosecutor.

JUDGMENT

(Judgment of the Court was delivered by C.NAGAPPAN, J.)

The appellants are two in number and they are accused Nos.1 and 2 in Sessions Case No.168/1994 on the file of Additional Sessions Judge, Nagapattinam and they will be referred as accused Nos.1 and 2 respectively in this Judgment for the sake of convenience.

2.Under Charge No.1, accused No.1-Moorthy was charged under Section 302 IPC for the offence of causing the death of Selvaraj by attacking him with Aruval. Under Charge No.2, accused No.2-Anandan was charged under Section 302 IPC read with Section 34 IPC on an allegation that in furtherance of common intention to cause the death of Selvaraj, he also attacked Selvaraj during the occurrence with stick, resulting in his death. The learned Sessions Judge found both the accused guilty of the charges framed against them and accordingly, convicted and sentenced them to undergo imprisonment for life. Challenging the said conviction and sentence, both the accused have preferred the present appeal.

3.To prove its case, prosecution has examined P.Ws.1 to 18 and marked Exs.P1 to P24 as well as M.Os.1 to 9.

4.The case of the prosecution, as discerned from oral and documentary evidence, can be summarised as follows.

P.Ws.1 to 5 are residents of Tagore Street in Akkur village and accused Nos.1 and 2. who are brothers, are also residing together in a house in the same street. Both the accused went and saw a bride for accused No.1-Moorthy and on account of refusal by the bride's party, on 2.7.1993, at about 7.45 pm, both the accused standing near their house, started abusing the bride's family in filthy language and when P.W.3 Saroja questioned the same, she was pushed down by them. P.W.3 Saroja complained this to Selvaraj, pursuant to which, Selvaraj, his wife and P.W.3 came to the house of the accused and Selvaraj questioned the conduct of the accused by beating them with hands and the accused also beat him. When Selvaraj moved from that place by saying that he would deal with them afterwards, accused No.1-Moorthy took out M.O.1 Aruval from his house and accused No.2-Anandan beat

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Selvaraj with stick on his left hand and forehead and when Selvaraj fell upside down, accused No.2-Anandan sat on him and accused No.1-Moorthy cut Selvaraj with M.O.1 Aruval on his left leg and when Selvaraj turned over to avoid the second cut, it fell on the left leg and left hand of accused No.2 and accused No.2 snatched M.O.1 Aruval from accused No.1 and tried to cut Selvaraj and when P.Ws.1 to 4 went near shouting, they ran away with their weapons. The injured Selvaraj was taken in a wooden cot to Sembanarkoil Police Station.

5.P.W.11 Head Constable Govindaraj, on 2.7.1993, recorded Ex.P1, Statement given by injured Selvaraj in Sembanarkoil Police Station and on memo, sent him to Mayiladuthurai Government Hospital and registered a case in Crime No.483/1993 under Section 324 IPC and prepared Ex.P15 First Information Report and also recorded the statement of Selvaraj under Section 161(3) Cr.P.C. On the same day, he also registered a case in Crime No.484/1993 under Section 324 IPC on the counter complaint given by the accused and referred them to hospital with memo for treatment.

6.P.W.8 Dr.Govindarajan, on the same day, at 12 midnight, examined Selvaraj in Mayiladuthurai Government Hospital and found the following injuries.

" 1.Cut injury 8 cm x 3 cm x 3 cm muscle deep back of leg-bleeding most present.

2.Laceration forehead 2 cm x 1/2 cm x 1/4 cm - bleeding present.

3.Contusion 3 cm x 3 cm back of (L) forearm.

4.Scratch 3 cm over (L) forearm."

He referred him to Thanjavur Medical College Hospital for further treatment. Ex.P7 is the Accident Register issued by him. P.W.9 Dr.Anantharamakrishnan examined Selvaraj at 3 am on 3.7.1993 in Thanjavur Medical College Hospital and declared him dead. Ex.P.10 is the Death intimation. P.W.8 Dr.Govindarajan examined accused No.2 on police memo at 11.25 pm on 2.7.1993 in the hospital and issued Ex.P8 Accident register extract. He also examined Basker on police memo at 11.35 pm on the same day and Ex.P9 is the Accident register extract.

7.P.W.11 Head Constable Govindaraj went to the place of occurrence in the early morning on 3.7.1993 and prepared Ex.P3 Observation mahazar in the presence of P.W.6 and another. He also seized M.O.3 Blood stained earth, M.O.4 Sample earth, M.O.5 shirt from the occurrence place in the presence of P.W.6 and another. He prepared Ex.P16 Rough sketch and received the intimation about the death of Selvaraj at 9.30 am and altered the

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case into one under Section 302 IPC and prepared Ex.P17 Express report and despatched the same.

8.P.W.17 Inspector Palanivel took up the investigation and conducted inquest on the body of Selvaraj at 1 pm in Thanjavur Medical College Hospital and prepared Ex.P19 Inquest report. He examined P.Ws.1, 2 and others and sent the body for post-mortem with Ex.P.11 Requisition through P.W.15 Constable Nagarajan.

9.P.W.10 Dr.Thangaraj conducted post-mortem at 3.45 pm on 3.7.1993 on the body of Selvaraj and found the following injuries.

> "(1) Horizontal gaping chop wound 10 x 4 cms over back of left leg 16 cm above the ankle joint 22 cm below the back of left knee. On dissection the subcutaneous tissues short saphenous vein and underlying muscle of the leg are completely cut. On further dissection the posterior febula and pereneal arterier are also found cut. On further dissection there is a cut over posterior aspect of left febula to an extent of 1 x 0.5 cm x 0.5 cms. The depth of the Wound is 6 cms.
>
> (2) Laceration 1 x 0.5 cms skin deep over back of lower 3rd of left forearm.
>
> (3) Abrasion 1 x 0.5 cms over outer aspect of lower 3rd of left forearm. On dissection extensive bruising of underlying tissues with fracture of radius at the junction of middle and lower 3rd.
>
> (4) An incised wound 1.5 x 0.5 cms tendon deep over outer aspect of middle phalanx of left index finger.
>
> (5) A sutured wound 1.5 cms long over the left side of forehead close to the midline. On removal of suture the edges are irregular muscle deep.
>
> (6) Swelling 6 x 3 cms over outer aspect of upper part of left upper arm. On dissection contusion of tissues 8 x 4 x 1 cms."

He opined that the deceased would appear to have died of shock and haemorrhage due to chop injury and issued Ex.P14 Post-mortem Certificate.

10.P.W.17 Inspector Palanivel examined some witnesses on

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4.7.1993 and on 5.7.1993 at 6 am, arrested accused No.1-Moorthy near Mathur bus stop and enquired him in the presence of P.W.7 and another and accused No.1 gave Ex.P5 information in his confessional statement and took them to a bush near Akkur Railway Station and produced Ex.P1 Aruval from the bush and P.W.17 Inspector Palanivel recovered the same in Ex.P6 mahazar in the presence of P.W.7 and sent accused No.1 for judicial remand. He arrested accused No.2-Anandan at 9 am on 6.7.1993 near his house and subjected him judicial remand on the same day. He examined P.W.10 Dr.Thangaraj on 7.7.1993 and gave Ex.P20 Requisition for sending the Material Objects for chemical analysis and the same were sent under Ex.P21 Requisition of the Court and Ex.P22 Chemical Analyst's Report and Exs.P23 and P24 Serologist's reports were received.

11.P.W.17 Inspector Palanivel was transferred and P.W.18 Inspector Manavalan continued the investigation and examined P.W.8 Dr.Govindarajan on 11.1.1994 and P.W.9 Dr.Anantharamakrishnan on 27.1.1994 and he examined some more witnesses and completed the investigation by filing final report. He also conducted investigation in the case registered in Crime No.484/1993 and referred the same as 'mistake of fact' and sent the final report to the Judicial Magistrate Court No.I, Mayiladuthurai.

12.Both the accused were questioned under Section 313 Cr.P.C and they filed their written statements. The learned Sessions Judge found both the accused guilty of the charges framed against them and sentenced them as stated earlier.

13. Mr.K.V.Sridharan, learned counsel appearing for the appellants, while assailing the judgment of conviction, would point out various infirmities and contend that the prosecution has suppressed the genesis and origin of the occurrence and not presented the true version and therefore the appellants are entitled to acquittal.

14. We have heard the Mr.E.Raja, Additional Public Prosecutor on these aspects.

15. On a careful scrutiny of the materials available on record, we are unable to hold that the prosecution has proved its case beyond reasonable doubt. The various infirmities, which are noticed in this case, would make it clear that the prosecution has not come with clean hands and not presented the true version and the appellants/accused are entitled to be acquitted for the reasons given below.

16. The prosecution, in order to prove the occurrence, has examined P.Ws.1 to 4 and according to them, both the accused, at

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the time of occurrence, were standing near their house, abusing a bride's family in filthy language and when the neighbour P.W.3 Saroja questioned the same, she was pushed down and she complained this to Selvaraj, who intervened and questioned the conduct of the acused, resulting in exchange of blows and at that time, accused No.1 Moorthy took out M.O.1 Aruval from his house and accused No.2 Anandan beat Selvaraj with stick on his left hand and forehead and when Selvaraj fell upside down, accused No.2 Anandan sat on him and accused No.1 Moorthy cut Selvaraj with M.O.1 Aruval on his left leg and when Selvaraj turned over to avoid the second cut, it fell on the left leg and left hand of accused No.2 and accused No.2 snatched M.O.1 Aruval from accused No.1 and tried to cut Selvaraj and on the shouting of P.Ws.1 to 4, they ran away from the scene with their weapons and injured Selvaraj was first taken to Police Station and then to hospitals, where he was declared dead. This is the version given by all the eye-witnesses while describing the occurrence.

17.Ex.P1 is the complaint given by injured Selvaraj in Sembanarkoil Police Station before P.W.11 Head Constable Govindaraj, who reduced the same into writing and registered a case on it. On account of the death of Selvaraj, Ex.P1 statement has to be construed as a dying declaration and in that statement, Selvaraj has stated that during the occurrence, accused No.1 Moorthy cut him with Aruval on his left leg and accused No.2 Anandan snatched that Aruval from accused No.1 and further cut him on his head, resulting in injuries and the occurrence is known to the villagers Veeramani and Murugesan. Veeramani has been examined as P.W.1 and Murugesan was not examined in this case.

18. According to the deceased Selvaraj, both the accused attacked him with Aruval during the occurrence, but whereas, according to P.Ws.1 to 4, at the time of occurrence, accused No.1 Moorthy alone attacked Selvaraj with M.O.1 Aruval and accused No.2 Anandan beat him with stick and only made a futile attempt to attack him with Aruval.

19. The above contradiction creates serious doubt in the veracity of the eye-witnesses account with regard to the manner of the occurrence and the weapons used.

20. During the occurrence, accused No.2 Anandan also sustained injuries and according to P.W.11 Head Constable Govindaraj, both the accused came to the Police Station on the occurrence night itself and lodged a counter complaint on which he registered a case and sent accused No.2 Anandan on memo to Government Hospital for treatment. P.W.8 Dr.Govindarajan has examined accused No.2 Anandan in Mayiladuthurai Government Hospital on the same night and found two injuries, namely, a laceration and cut injury on his

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body and issued Ex.P8 Accident register extract stating that the injuries are simple.

21. P.W.8 Dr.Govindarajan has also examined Basker, brother of the accused, on the same night in the Government Hospital, Mayiladuthurai and found three injuries on his body, as evident from Ex.P9 Accident register extract issued by him. To explain the injuries on Basker, the prosecution has examined P.W.5 Rajamanickam and according to him, he went to see a movie in Gandhi Theatre in the evening on the occurrence day and at that time, he saw both the accused and their brother Basker fighting with each other, resulting in injuries to Basker alone.

22. The above testimony is highly artificial and the prosecution has only made a vain attempt to show that Basker has sustained injuries in a different transaction. Whatever it may be, the settled law is that when the counter complaint is given by the accused for the injuries sustained by him in the course of the same transaction at the hands of the deceased party, the Investigation Officer has to investigate both the complaints and then only file final report and place all the materials before the Court.

23. In the present case, the Investigation Officers, namely, P.W.17 Inspector Palanivel and P.W.18 Inspector Manavalan have only stated that they conducted investigation in the counter case and referred the same as 'mistake of fact' and they have not marked the counter complaint and the referred report in this case. In short, the prosecution has suppressed the genesis and the origin of the occurrence and thus, not presented the true version and in those circumstances, we are of the view that the appellants are entitled to be given the benefit of doubt and accordingly, the conviction and sentence imposed on them are liable to be set aside.

24. In the result, the appeal is allowed and the conviction and sentence imposed on the appellants by the trial Court are set aside and they are acquitted of the charges. The bail bonds executed by them shall stand cancelled.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Judicial Magistrate No.I, Mayiladuthurai.

2. -Do- through the Chief Judicial Magistrate,
Nagapattinam.

3. The Additional Sessions Judge, Nagapattinam.

4. The Principal Sessions Judge, Nagapattinam.

5. The Superintendent, Central Prison, Cuddalore.

6. The Public Prosecutor,
High Court, Madras.

7. The District Superintendent of Police,
Chennai.

8.The District Collector, Nagapattinam.

9.The Director General of Police, Mylapore, chennai. 4
10.The Inspector of Police, Sembanarkoil Police Station,
Sembanarkoil

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